

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BYNUM,

Plaintiff,

-against-

MAPLEBEAR INC.,

Defendant.

15-CV-6263 (JBW)

United States Courthouse
Brooklyn, New York

February 8, 2016
10:00 a.m.

TRANSCRIPT OF CIVIL CAUSE FOR MOTION
BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff: ABDUL HASSAN LAW GROUP, PLLC
215-28 Hillside Avenue
Queens Village, New York 11427
BY: ABDUL K. HASSAN, ESQ., ESQ.

For THE PLAINTIFF: KEKER & VAN NEST LLP
63 Battery Street
San Francisco, California 94111-1809
BY: BENJAMIN W. BERKOWITZ, ESQ.

REAVIS PARENT LEHRER LLP
41 Madison Avenue
41st Floor
New York, New York 10010
BY: ALICE K. JUMP, ESQ.

Court Reporter: Marie Foley, RMR, CRR
Official Court Reporter
Telephone: (718) 613-2596
Facsimile: (718) 613-2648
E-mail: Marie_Foley@nyed.uscourts.gov

Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

Proceedings

2

1 (In open court.)

2 COURTROOM DEPUTY: All rise. Civil cause for
3 motion, Bynum versus Maplebear Inc.

4 Counsel, note your appearances, please. For the
5 plaintiff.

6 MR. HASSAN: Your Honor, Mr. Abdul Hassan for the
7 plaintiff. Good morning.

8 THE COURT: Good morning.

9 And you are?

10 THE PLAINTIFF: I'm Melody Bynum.

11 MR. BERKOWITZ: Good morning, Your Honor. Ben
12 Berkowitz from Keker and Van Nest for the defendant. With me
13 is Heather Wake, who is a senior manager at the client.

14 THE COURT: Good morning.

15 MS. JUMP: My name is Alice Jump, I'm local counsel
16 with Reavis Parent Lehrer for the defendant.

17 THE COURT: Thank you.

18 Is it your motion?

19 MR. BERKOWITZ: This is our motion, Your Honor.

20 THE COURT: I'll be happy to hear from you.

21 MR. BERKOWITZ: Thank you, Your Honor.

22 As the U.S. Supreme Court has said, there is a
23 strong presumption in favor of arbitration of disputes under
24 the FAA.

25 THE COURT: I want to swear the plaintiff and

Proceedings

3

1 representative of the defendant, please, before the argument
2 so I can interject questions as needed.

3 COURTROOM DEPUTY: Stand and raise your right hand.
4 (Melody Bynum sworn.)

5 COURTROOM DEPUTY: Please state your name.

6 THE PLAINTIFF: Melody Bynum.

7 COURTROOM DEPUTY: Be seated.

8 Raise your right hand.

9 (Heather Wake sworn.)

10 COURTROOM DEPUTY: Restate your name.

11 MS. WAKE: Heather Wake.

12 THE COURT: Yes.

13 MR. BERKOWITZ: Thank you, Your Honor.

14 So, under the Supreme Court precedent, arbitration
15 agreements are governed -- that are governed by the FAA are
16 presumed valid and enforceable, and the presumption of
17 validity reflects Congress's intent that under the FAA there
18 should be a, quote, liberal federal policy favoring
19 arbitration agreements and recognizing the, quote, fundamental
20 principle that arbitration is a matter of contract.

21 As the Supreme Court said in the Dean Witter case,
22 the FAA, quote, the FAA leaves no place for the exercise of
23 discretion by district court, but instead mandates the
24 district court shall direct the parties to proceed to
25 arbitration on issues as to which an arbitration agreement has

Proceedings

4

1 been signed.

2 Under the FAA, it is the plaintiff's burden, the
3 plaintiff who bears the burden in any challenge to the
4 validity and enforceability of an agreement to arbitrate, and
5 that challenge must be held to the same rigorous and demanding
6 standards as would apply to the challenge --

7 THE COURT: Well, that's boilerplate. I'm going to
8 apply that law, of course.

9 Where were you working, madam?

10 THE PLAINTIFF: In the state of New York.

11 THE COURT: Did you ever work in California?

12 THE PLAINTIFF: I've never even visited California.

13 THE COURT: Where did you sign the agreement?

14 THE PLAINTIFF: In New York where I reside.

15 THE COURT: Why shouldn't the arbitration take place
16 in New York?

17 MR. BERKOWITZ: Your Honor, we agree the arbitration
18 should take place in New York, and that's what the -- so if
19 the Court --

20 THE COURT: Well, will the arbitral organization
21 arbitrate in New York?

22 MR. BERKOWITZ: Yes, Your Honor. It's a JAMS
23 arbitration. JAMS has an office, I believe it's in Times
24 Square.

25 THE COURT: I know they have an office in New York,

Proceedings

5

1 but will they agree to arbitrate under this agreement in New
2 York?

3 MR. BERKOWITZ: Yes.

4 THE COURT: How do you know?

5 MR. BERKOWITZ: So, standard number 6 of their
6 minimum standards, which is part of our contract, reads,
7 standard number 6 says: "Costs and location must not preclude
8 access to arbitration."

9 These are procedural protections that apply to any
10 arbitration that proceeds under the JAMS employment
11 arbitration rules which are designated in this contract, and
12 these are standards that are attached to the contract that Ms.
13 Bynum signed. They provide, quote, an employee's access to
14 arbitration must not be precluded by the employee's inability
15 to pay any costs or by the location of the arbitration. The
16 only fee that an employee may be required to pay is JAMS
17 initial case management fees. All other costs must be borne
18 by the company, including any additional JAMS case management
19 fees.

20 THE COURT: Well, let's stick to venue first.

21 MR. BERKOWITZ: So, in terms of --

22 THE COURT: Are you agreeing and stipulating that
23 venue is separable and that venue is properly in New York?

24 MR. BERKOWITZ: Agreed, Your Honor.

25 THE COURT: What's the view of the plaintiff?

Proceedings

6

1 Assuming we arbitrate. I haven't decided that.

2 MR. BERKOWITZ: Well, Your Honor, the only thing I
3 had access to that their motion is based on is this purported
4 contract and it does say California. I don't know too much
5 about --

6 THE COURT: Excuse me. Please answer my question.
7 Will you stipulate that if arbitration is ordered
8 that it should be in New York and that's severable?

9 MR. HASSAN: Yes, Your Honor. If that's Your
10 Honor's ruling initially, then I would prefer it in New York.

11 THE COURT: All right. Then I find that that, in
12 any event, would be required under the policy of change of
13 venue, it's now in the federal court, 28 U.S. Code 1404 which
14 allows the Court to transfer a case to an appropriate venue
15 not burdensome to the parties and witnesses. And I'm ruling
16 that since this is now in the federal court, that statute
17 applies with respect to venue, and if the case had to be
18 arbitrated in California it would violate federal policy and
19 would be invalid.

20 So we've covered the venue problem, correct?

21 MR. HASSAN: Yes, Your Honor.

22 THE COURT: And it's so stipulated.

23 And, I assume that JAMS will take the case in New
24 York. If JAMS comes back and says we won't take it on a
25 transfer of venue, effectively, then it comes back because the

Proceedings

7

1 arbitration fails on impossibility as well as
2 unconscionability, correct?

3 MR. BERKOWITZ: First of all, I believe JAMS will
4 take it and rule --

5 THE COURT: I know, but I'm laying this out as the
6 hypothetical.

7 MR. BERKOWITZ: If JAMS, and I don't think they
8 will, but if for some reason JAMS were to decline to take the
9 case, my understanding of how this works under the FAA is it
10 would come back to this court. The court would then need to
11 determine whether the designation of JAMS as the forum was,
12 quote/unquote, integral to the contract.

13 THE COURT: Well, I'm going to find it's integral.
14 I find that the JAMS designation was integral. So if JAMS
15 won't take it, I won't apply the arbitration clause. That's
16 the venue problem.

17 Now we have the problem which is dealt with at
18 considerable length and in a way that I find appropriate by
19 Judge Chen in the Northern District of California. And that
20 brings us to the fee splitting and the fee shifting provision
21 in the agreement, which under California law is unconscionable
22 and is probably invalid under JAMS minimum standards.

23 Since the parties have agreed that California law
24 applies, the unconscionability rulings of the California
25 courts apply and these two provisions are unconscionable

Proceedings

8

1 unless they're stricken.

2 MR. BERKOWITZ: I would certainly agree -- well,
3 first of all, Your Honor, as we've informed Mr. Hassan,
4 Instacart intends to pay the arbitrator's fees, and I
5 certainly agree with the striking of the fee splitting
6 provision. The prevailing party provision, we have no
7 objection to it being struck.

8 THE COURT: All right. So those they'll strike.

9 Will you agree to striking those two, if I order
10 arbitration?

11 MR. HASSAN: Yeah, I believe they're invalid, Your
12 Honor. They should be stricken.

13 THE COURT: All right. So those are stricken by
14 stipulation.

15 Now, then the question is will JAMS take it with
16 these three stripping orders. What I would propose to do --

17 MR. BERKOWITZ: Yes, Your Honor, if I could offer
18 one point?

19 THE COURT: Yes.

20 MR. BERKOWITZ: So, this case, we know that JAMS
21 took this arbitration, for example.

22 THE COURT: That may be true.

23 MR. BERKOWITZ: Okay.

24 THE COURT: I'm telling you I'm assuming they're
25 going to do it. I'm following the court's order in this case

Proceedings

9

1 which I find appropriate and proper. It doesn't rule here,
2 but it is a ruling that I find persuasive, and that's
3 Cobarruviaz v. Maplebear Inc., the same defendant as in this
4 case. It's 2015 WL 6694112, a 2015 case, as I said, by Judge
5 Chen in the Northern District of California. So I'm following
6 that case, but it's slightly different on the facts because in
7 that case, the plaintiff brought the case in California and
8 therefore the venue provision was not in violation of, as I'm
9 now holding, the theory of venue in the ruling venue provision
10 1404 of Title 18.

11 So, that's what I would propose to do, and I take it
12 the defendant accepts whatever stipulations are required to do
13 that.

14 MR. BERKOWITZ: Correct, Your Honor.

15 THE COURT: What's the plaintiff's view?

16 MR. HASSAN: Well, Your Honor, we believe that
17 arbitration should not be compelled in FLSA cases. We go back
18 to the high court in Barrentine where Congress intended to
19 give individual employees the right to bring their minimum
20 wage claims under the FLSA in court and because these
21 congressionally granted FLSA rights are best protected in a
22 judicial rather than an arbitral forum, we hold that a
23 petitioner's claim is not barred by prior submission to
24 arbitration. And the court then prior to that looked at the
25 remedial section, 29 USC 216(b), and it says this is a section

Proceedings

10

1 that says you bring the case in court if no other forum is
2 mentioned or specified and so on.

3 So, whether or not we agree with that, I believe the
4 court here, the Supreme Court was interpreting the statute as
5 meaning that FLSA claims because of a special public policy
6 and for remedial purposes under the statute cannot be
7 compelled into arbitration that it's an unfettered right to
8 bring these claims in federal court.

9 THE COURT: But we've had a number of these claims
10 made subject to arbitration, haven't we?

11 MR. HASSAN: We've had lower court decisions, but I
12 don't think those lower court decisions considered these
13 arguments and looked at these cases. The only Second Circuit
14 decision, binding one, related to this subject was a
15 Sutherland case, and in Sutherland no one in that case was
16 interested in pursuing the case on an individual basis. The
17 lawyers and everyone wanted it to be a class action because it
18 was going to be big. So, the issue, as the court set out in
19 Sutherland was the question presented in this appeal is
20 whether an employee can invalidate a class action, waive a
21 provision in an arbitration agreement. So that was the
22 question. Everyone was quite happy to assume that, or didn't
23 even bother to address, whether or not the individual claim
24 could go to arbitration.

25 I think after Sutherland, I think the chief decision

1 dramatically reaffirmed the special public purpose and policy
2 under the FLSA. I mean, I was a losing lawyer in Cheeks, but
3 when I see these cases, I tend to agree with the Second
4 Circuit that there is a strong public policy here that should
5 be protected. That these employees cannot, whether or not the
6 defendant is paid, the public's interest in the statute cannot
7 be protected in arbitration.

8 As you know, the standard for overturning
9 arbitration decision, you have to show fraud or something like
10 that. Even if the arbitrator's wrong in applying the law and
11 so on, it still will not be reversed or overturned by a
12 district court. So you cannot effectively, the plaintiff
13 cannot effectively vindicate her rights in that forum and the
14 public's interest in the FLSA. This is one of the main things
15 that the Second Circuit and all these courts said require
16 approval, which now is all of them after Cheeks, cite as
17 justifying judicial oversight and so on in these cases.

18 So, I would kindly urge the court to hold --
19 especially because of the controlling high court precedent,
20 when the Second Circuit interpreted Barrentine, it said that
21 it -- it interpreted Barrentine as finding congressional
22 intent, intent, that the Fair Labor Standards Act claims be
23 nonarbitrable because of conflict between arbitration and the
24 FLSA's purposes. So, the Supreme Court in Barrentine
25 identified a conflict. They said look, there is a strong

Proceedings

12

1 public policy in favor of arbitration, but there's a stronger
2 public policy on the line in FLSA and that conflict, we will
3 resolve it in favor of the FLSA. There's been no subsequent
4 high court decision to call Barrentine in doubt or to overrule
5 it, and lower courts cannot obviously overturn the Supreme
6 Court, and there is no Second Circuit case even addressing
7 Barrentine, and the ones that did, actually said the intent
8 was to choose the FLSA in court over arbitration.

9 So, our position would be that the court should find
10 that FLSA claims are not arbitrable. Thank you.

11 THE COURT: It's a very powerful argument and I tend
12 to agree with you, but I'm not sure the Supreme Court hasn't
13 gone the other way with respect to arbitration.

14 What's your view?

15 MR. BERKOWITZ: Well, I think the Supreme Court has
16 gone the other way with respect to arbitration. I think
17 what's critical is that the Barrentine case is not an
18 arbitration case under the FAA. What the Barrentine was about
19 was a collective bargaining agreement. This was a case where
20 the plaintiff hadn't signed any arbitration agreement. The
21 union had signed an arbitration agreement with the lawyer
22 through the collective bargaining agreement process. That
23 arbitration agreement didn't permit or provide for the
24 vindication of the individual employee's rights, and so the
25 individual employee would have been left without any forum at

Proceedings

13

1 all, you know, arbitration or anything. So there wasn't -- it
2 simply wasn't an FAA case. It's completely inapposite on its
3 facts.

4 The Second Circuit actually has ruled on this issue.
5 So, I mean, the Sutherland case, while it's true that involved
6 arbitration agreement, that included a class action waiver,
7 the issue, the question presented in that case was whether --
8 was, you know, the court recited some of, you know, as you
9 call it, the boilerplate about there being a strong federal
10 policy in favor of the FAA, in favor of arbitration, that
11 arbitration agreements under the FAA must be enforced
12 according to their terms, et cetera, et cetera, unless, and it
13 said here and these are sort of the critical quotes from that
14 case that directly answer the question, it says arbitration --

15 THE COURT: Page reference?

16 MR. BERKOWITZ: This is at 726 F.3d 295 going on to
17 296 through actually really through 298. But it says on
18 page -- at the very bottom of page 295, it says: "Arbitration
19 agreements should be enforced according to their terms unless
20 the FAA's mandate has been overridden by a contrary
21 congressional command."

22 The court then followed, goes through a fairly
23 lengthy analysis and on the next -- at the very bottom of page
24 297 concludes that, quote: The FLSA does not include a
25 contrary congressional command that prevents the arbitration

Proceedings

14

1 agreement from being enforced by its terms. And so the court
2 has asked the question in Sutherland whether the FAA is
3 preempted by the FLSA and concludes that it is not.

4 So the question, the specific question that's argued
5 by the plaintiffs in this case has been rejected by the Second
6 Circuit.

7 MR. HASSAN: Your Honor, might I say, there's a
8 difference between a class action waiver. The courts have
9 reasoned that the right to participate in a class action is
10 not the same as the right to overtime in the first place.

11 So, the court in Sutherland, first of all, the issue
12 here was not before them and they did not even address the
13 Barrentine case. And in Barrentine, if I was to scroll down,
14 I would say look, the Supreme Court has said there is a
15 congressional directive in the statute that they interpreted
16 it that prefers court access over arbitration in FLSA cases.
17 There's been no subsequent high court decisions. And FLSA
18 cases, as we know, are different. They have special public
19 policy underlying. The Second Circuit reaffirmed that in
20 Cheeks.

21 So, Sutherland, class action waivers are a whole
22 different beast than underlying waivers. You can waive
23 participation in class action. You can't waive underlying
24 FLSA rights. So it's distinguishable, and moreover the court
25 itself in Sutherland said that was not the issue before the

Proceedings

15

1 court.

2 I think the court should follow Barrentine as it did
3 just two years ago in the Polanco case, I think it was, and if
4 the Second Circuit decides to change its mind or the Supreme
5 Court designed to change its mind, well, then so be it at that
6 point, but right now we think the controlling law would
7 require the case stay in the district court.

8 THE COURT: Well, as I say, I think it's a powerful
9 argument on policy and I agree with you that that should be
10 the policy, but the Supreme Court's arbitration cases are so
11 strong that I think they control.

12 So let's find out what the facts are.

13 Did you read the agreement before you signed it,
14 madam?

15 THE PLAINTIFF: I probably read most of it. I don't
16 recall the arbitration section of it.

17 THE COURT: Did they hand you the contract
18 physically?

19 THE PLAINTIFF: No. They e-mailed it to --

20 THE COURT: I can't hear you.

21 THE PLAINTIFF: They e-mailed it.

22 THE COURT: They e-mailed it to you?

23 THE PLAINTIFF: Yes, electronic delivery via e-mail.

24 THE COURT: To your home computer?

25 THE PLAINTIFF: To my e-mail address which I

Proceedings

16

1 retrieved on my phone or any way accessed.

2 THE COURT: Well, did you then read the whole
3 contract?

4 THE PLAINTIFF: Well, like I said, I believe I did,
5 but I don't recall the arbitration section of it.

6 THE COURT: How much education --

7 THE PLAINTIFF: That was --

8 THE COURT: I'm sorry?

9 THE PLAINTIFF: That was over a year and about a
10 year-and-a-half now. So I don't remember. I wouldn't
11 remember it.

12 THE COURT: What's your education?

13 THE PLAINTIFF: I have half year of college.

14 THE COURT: Where?

15 THE PLAINTIFF: At University of Phoenix.

16 THE COURT: Virginia?

17 THE PLAINTIFF: No, I actually did online classes.

18 THE COURT: I can't hear you.

19 THE PLAINTIFF: Online classes.

20 THE COURT: Do you have a high school diploma?

21 THE PLAINTIFF: Yes, I do.

22 THE COURT: From where?

23 THE PLAINTIFF: Norman Thomas High School in
24 Manhattan, New York City.

25 THE COURT: Do you know what arbitration is?

Proceedings

17

1 THE PLAINTIFF: Not really. Not to specifics, no.

2 THE COURT: What did you think that arbitration
3 meant?

4 THE PLAINTIFF: Like I say, I don't remember from
5 then the entire contract because it was over a year ago and a
6 lot happens in a year.

7 THE COURT: What's the practice with respect to
8 bringing this arbitration clause to the attention of
9 employees?

10 MS. WAKE: Make sure I'm understanding the question
11 correctly.

12 What is Instacart's practice in bringing arbitration
13 to the contractors or employees?

14 THE COURT: Yes.

15 MS. WAKE: It's all done through the contract that
16 we submit to them and have them review and sign.

17 THE COURT: Do you e-mail the full contract,
18 including the arbitration clause?

19 MS. WAKE: Yes, the arbitration clause is part of
20 the contract that the applicant is reviewing.

21 THE COURT: Well, how do they get it on their
22 computer? Do they have to see the whole arbitration clause in
23 order to sign it?

24 MS. WAKE: Yeah. So, what Instacart does is we send
25 them an e-mail to the e-mail address that they provide and

Proceedings

18

1 through that e-mail they click through to a link that sends it
2 to a third party site called Hello Sign, which is electronic
3 signature platform, and they are able to review the contract
4 through that link or they can download it and review it at
5 their leisure at that point.

6 THE COURT: Well, does the arbitration clause come
7 on to the screen automatically?

8 MS. WAKE: Yes. It's a multipage document, so they
9 would have to go through the document and the arbitration
10 clause is within the document. It's not on the first page.

11 THE COURT: Can you skip the agreement and go to
12 signing?

13 MS. WAKE: No, you have to scroll down through the
14 entire agreement to get to the signature page.

15 THE COURT: Is that right?

16 THE PLAINTIFF: Like I said, I don't recall exactly.

17 THE COURT: But you don't disagree that you had the
18 opportunity and had to scroll down to get to the signing page?

19 THE PLAINTIFF: Well, you can, in any document, you
20 can scroll through the entire document and just skip whatever
21 you want if you choose to.

22 THE COURT: I understand.

23 THE PLAINTIFF: And then skip to whatever section.

24 THE COURT: But there was no shortcut, you had to
25 scroll through?

Proceedings

19

1 THE PLAINTIFF: I believe so, yeah.

2 THE COURT: All right. Well, I've got to find that
3 on the facts this witness and the plaintiff had an
4 opportunity.

5 English is your first language, correct?

6 THE PLAINTIFF: Yes, correct.

7 THE COURT: And you had a high school diploma, so
8 there's no question that you could read it.

9 THE PLAINTIFF: Correct.

10 THE COURT: Now, that's out of the case.

11 Well, do we have before us now all the cases in the
12 Second Circuit dealing with the application of arbitration
13 through these Fair Labor Standards cases?

14 MR. HASSAN: As far as I know, yes, Your Honor. I
15 think Sutherland is the only published decision from the
16 Second Circuit.

17 MR. BERKOWITZ: As far as I know, Sutherland is the
18 key decision. I don't know if there's other decisions that
19 may reference Sutherland or otherwise.

20 THE COURT: What about the district court, do we
21 have the district court decisions now?

22 MR. BERKOWITZ: Any arbitration FLSA case? I'm not
23 sure, I don't know that we've looked exhaustively at that, but
24 we've looked -- certainly Sutherland is the -- is the key
25 case.

Proceedings

20

1 THE COURT: Well, what have other district courts
2 done? Have any district courts disagreed with your view?

3 MR. BERKOWITZ: No court, we've looked at quite a
4 few courts, and as far as I'm aware, there is no court that
5 has gone, has decided this issue differently. We decided the
6 Cobarruviaz case, which you read from, Your Honor, also
7 involved FLSA cases and also involved New York Labor Law
8 cases.

9 We also cited in our reply brief, I believe, the
10 case called Patterson. I can find the cite for the Court.
11 So, in addition to the Sutherland case, there's the two
12 district court cases we cited, both of which are Southern
13 District of New York cases, not Eastern District, but Southern
14 District of New York cases, were the Patterson v. Raymours
15 Furnitures case, which is found at 96 F.Supp.3d 71. It's a
16 2015 case. The other case we cited is Lavoie v. UBS
17 Financial, which is another Southern District 2012 case which
18 you can find at 2012 WL 124590. And in footnote 3 of our
19 brief, we have quite a lengthy list of the other Court of
20 Appeals decisions, all of which have agreed with Sutherland
21 that, to quote the Fourth Circuit, for example, quote, there
22 is nothing in the text indicating that Congress intended to
23 preclude arbitration of FLSA claims, and that's the Adkins
24 case, which is 303 F.3d 496. And we then cite also cases from
25 the Ninth Circuit, the First Circuit, the Third Circuit, the

Proceedings

21

1 Fifth Circuit, the Eighth Circuit and the Eleventh Circuit,
2 all of which ruled in the same manner that Sutherland did in
3 the Second Circuit.

4 THE COURT: Now, I'm going to do what I indicated.
5 It's stipulated that these provisions are severed either under
6 California law or federal law that are objectionable.

7 I find that the plaintiff had an opportunity,
8 reasonable opportunity, to examine the clause and to
9 understand it, and there was no overreaching in connection
10 with presenting it to the prospective employee. That as
11 narrowed to eliminating the objectionable clauses, the
12 arbitration clause is enforceable. And I'm going to stay the
13 case.

14 So, as I understand it, the defendant will make an
15 application to JAMS.

16 MR. BERKOWITZ: Yes, Your Honor.

17 THE COURT: If JAMS refuses to take the case on the
18 ground that its procedures prevent it from taking this kind of
19 case, either side can come back to the court and we'll proceed
20 with the case.

21 The parties are directed to take steps, and JAMS is
22 requested to take steps, to quickly decide this issue so that
23 the plaintiff's substantive rights can be promptly discussed.

24 Okay?

25 MR. BERKOWITZ: Yes, Your Honor.

Proceedings

22

1 MR. HASSAN: Thank you.

2 THE COURT: Thank you.

3 Are you working now?

4 THE PLAINTIFF: Yes.

5 THE COURT: You are working?

6 THE PLAINTIFF: Yes.

7 THE COURT: Okay.

8 MR. BERKOWITZ: Thank you, Your Honor.

9 MR. HASSAN: Thank you, Your Honor.

10 MR. BERKOWITZ: Your Honor, we have also I guess a
11 3:00 or 3:30 case management conference with Judge Pollak.
12 Will that be vacated, or should we appear?

13 THE COURT: No, vacated, but go down and let the
14 magistrate judge know.

15 MR. BERKOWITZ: Great. Thank you, Your Honor.

16 MR. HASSAN: Thank you, Your Honor.

17 THE COURT: Daily copy is ordered by the court,
18 costs by defendant.

19 (Time noted: 11:00 a.m.)

20

21

22

23

24

25